



R/W MANUAL CHANGE
(1993 Edition)

RWMC- 168

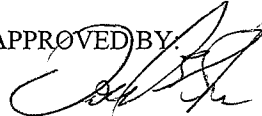


PROCEDURAL HANDBOOK
(1984 Edition)

RWPH-____-____
TRANSMITTAL#____

TITLE:
ACQUISITION

APPROVED BY:



DONALD E. GREBE

DATE ISSUED:
MAR - 5 2007

Page 1 of 1

SUBJECT AREA:
CHAPTER 8 - ACQUISITION

ISSUING UNIT:
OFFICE OF RIGHT OF WAY PROJECT DELIVERY

SUMMARY OF CHANGES: Revises 8.01.14.00 and updates Exhibit 8-EX-16, Tables of Contents for sections and exhibits.

PURPOSE/BACKGROUND

This manual change revises Section 8.01.14.00 and updates Exhibit 8-EX-16.

To comply with Senate Bill (SB) 1210 which became effective January 1, 2007, the Department will include a written notice to the property owner that they are eligible to receive reimbursement of up to \$5,000 for reasonable cost of an independent appraisal ordered by the owner of a property the Department intends to purchase under the threat of eminent domain.

The Department's written notice will be included in Exhibit 8-EX-16 (Summary Statement Relating to the Purchase of Real Property or an Interest Therein).

PROCEDURES

8.01.14.00	Removed nonapplicable verbiage.
8-EX-16	Revised to comply with Senate Bill 1210.

EFFECTIVE DATE

Immediately.

MANUAL IMPACT

- Remove the superseded pages and insert the attached pages in the Manual.
- Record the action on the Revision Record.

REVISION SUMMARY

<u>Chapter</u>	<u>Remove Old Pages</u>	<u>Insert New/Revised Pages</u>
	Remove the following in its entirety:	Replace with the following in its entirety:
8 - Sections	Table of Contents (REV 5/2006) 8.01.00.00 (REV 5/2006)	Table of Contents (REV 2/2007) 8.01.00.00 (REV 2/2007)
8 - Exhibits	Table of Contents REV 5/2006 8-EX-16 (REV 11/2002)	Table of Contents REV 2/2007 8-EX-16 (REV 2/2007)

CHAPTER 8

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8.00.00.00 - ACQUISITION

8.01.00.00 - ACQUISITION GENERAL

8.01.01.00 Function and Responsibility

The Acquisition Branch is responsible for the timely securing of those property rights necessary to the certification of a project. Certification, insofar as the Acquisition Branch is concerned, means that any and all interests in the property adverse to State's use have either been cleared or the documents or legal process which will legally authorize entry by the Department have been secured.

Private property or interests therein will be acquired in accordance with Article I, Section 19 of the California Constitution.

"Sec. 19. Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation."

8.01.02.00 Government Code Requirements

In addition to the constitutional requirement, acquisition of private property for public use is also to be in accordance with sections of the Government Code entitled "Uniform Relocation Assistance and Real Property Acquisition Policies Act." Compliance with the Department's policy of paying just compensation should be assured when the constitutional and Government Code requirements are adhered to by the Acquisition Agent in dealing with the owners. (See "Statutes Relating to the California Department of Transportation.")

8.01.02.01 Real Property Acquisition Practices

7267. In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the public programs, and to promote public confidence in public land acquisition practices, public entities shall, to the greatest extent practicable, be guided by the provisions of Sections 7267.1 to 7267.7, inclusive, except that the provisions of subdivision (b) of Section 7267.1 and Section 7267.2 shall not apply to the acquisition of any easement, right of way, covenant, or other nonpossessory interest in real property to be acquired for the construction, reconstruction, alteration, enlargement, maintenance, renewal, repair, or replacement of subsurface sewers, water lines or appurtenances, drains, septic tanks, or storm water drains.

8.01.02.02 Appraisal and Negotiation

7267.1. (a) The public entity shall make every reasonable effort to expeditiously acquire real property by negotiation.

(b) Real property shall be appraised before the initiation of negotiations, and the owner, or his designated representative, shall be given an opportunity to accompany the appraiser during this inspection of the property.

8.01.02.03 **Offers, Value, and Appraisals**

7267.2. Prior to adopting a resolution of necessity pursuant to Section 1245.230 and initiating negotiations for the acquisition of real property, the public entity shall establish an amount which it believes to be just compensation therefor, and shall make an offer to the owner or owners of record to acquire the property for the full amount so established, unless the owner cannot be located with reasonable diligence. The offer may be conditioned upon the legislative body's ratification of the offer by execution of a contract of acquisition or adoption of a Resolution of Necessity or both. In no event shall such amount be less than the public entity's approved appraisal of the fair market value of the property. Any decrease or increase in the fair-market value of real property to be acquired prior to the date of valuation caused by the public improvement for which the property is acquired or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner or occupant, shall be disregarded in determining the compensation for the property. The public entity shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation. Where the property involved is owner-occupied residential property and contains no more than four residential units, the homeowner shall, upon request, be allowed to review a copy of the appraisal upon which the offer is based. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

8.01.02.04 **Prior Notice to Move**

7267.3. The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling, assuming a replacement dwelling will be available, or to move his business or farm operation, without at least 90 days' written notice from the public entity of the date by which such move is required.

8.01.02.05 **Continuation of Possession on Rental Basis**

7267.4. If the public entity permits an owner or tenant to occupy the real property acquired on a rental basis for a short term, or for a period subject to termination by the public entity on short notice, the amount of rent required shall not exceed the fair rental value of the property.

8.01.02.06 **Coercion**

7267.5. In no event shall the public entity either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

8.01.02.07 **Institution of Condemnation Proceeding**

7267.6. If any interest in real property is to be acquired by exercise of the power of eminent domain, the public entity shall institute formal condemnation proceedings. No public entity shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

8.01.02.08 **Uneconomic Remnant**

7267.7. If the acquisition of only a portion of a property would leave the remaining portion in such a shape or condition as to constitute an uneconomic remnant, the public entity shall offer to acquire the entire property if the owner so desires.

8.01.02.09 **Indemnity Clauses in Right of Way Contracts**

Government Code Section

Indemnification of Grantor Includes Railroads

14662.5. In any agreement entered into whereby the State obtains a grant of easement, lease, license, right of way, or right of entry (including without limitation, a right of way, or right of entry on or over property of any railroad), the state agency or its director entering into the agreement on behalf of the State may agree to indemnify and hold harmless the grantor, lessor, or licensor and may agree to repair or pay for any damage proximately caused by reason of the uses authorized by such easement, lease, license, right of way, or right of entry agreement.

8.01.03.00 **Negotiating Procedure**

All acquisition discussions shall be directed to accomplish the end result that the property owner receives just compensation which is also just and fair to the public; that every courtesy, consideration, and patience is extended to the property owner, and to foster a feeling of confidence and respect by the property owner toward the Department of Transportation and its employees. All offers shall represent the best and most current estimate of market value determined through sound, approved appraisal and acquisition practices.

Prior to any discussion as to the terms of the Right of Way Contract and the compensation to be paid, the property owner should be given full information as to the following:

- A. The role of the Department and its acquisition functions.
- B. The necessity for the proposed transportation improvement.
- C. Project design and how the proposed improvement will affect the property.
- D. The ability of our appraisal staff and the honest and sincere effort that has been made to determine the market value of the property. During the course of acquisition discussions, agents must remember that they are representing the interests of the public as well as that of the property owner. Care should be exercised at all times to protect the interests of the property owner, particularly if the owner may be unfamiliar or inexperienced in real estate transactions and real estate values.

If during the course of discussions for the purchase of the property, conditions or characteristics are discovered which were not available to be properly considered in the appraisal, these matters shall be fully considered and evaluated before acquisition of the property is continued.

Prior to conducting any acquisition discussion, the acquisition agent should be familiar with the following referenced material:

- A. Acquisition Chapter of the Right of Way Manual.
- B. Housing and Community Development (HCD) Guidelines, Article 6 (Exhibit 8-EX-1).
- C. 23 CFR 710.101 through 710.603 and 49 CFR 24.101 through 24.108.
- D. Sections 301 and 302, Title III, Uniform Real Property Acquisition Policy Act (Exhibit 8-EX-2).

Section 6194(a) of the HCD Guidelines, 2nd paragraph, dealing with rental rates based upon financial means, is neither the policy nor procedure of the Department. Again, any conflict in these guidelines is to be resolved in favor of the Uniform Act (Government Code Section 7260, et seq.). The HCD guidelines have been supplied for information purposes and are not to be construed as establishing a policy or procedure at variance with the Uniform Act.

The Acquisition Agent shall be familiar with Departmental policy relating to the acquisition of property and, in particular, the following statements of policy.

- A. All discussions for the acquisition of property or an interest therein shall be directed to result in the payment of just compensation.
- B. The Department shall make every reasonable effort to expeditiously acquire property through agreement with its owner.
- C. The property or interest therein shall be appraised prior to the initiation of discussions leading to its purchase.
- D. A prompt offer to acquire the property shall be made.
- E. The full amount of the appraisal shall be offered when price is first discussed.
- F. When acquiring real property subject to a lease, determine if there is a need to segregate the lessor's and lessee's interests prior to making a written offer.
- G. The property owner shall not be permitted any option privileges of repurchasing either land or improvements that the Department may subsequently declare to be excess property. No such obligation will be included in any right of way contract. No oral or written representation in this respect shall be made.
- H. The Acquisition function shall be conducted in such a way and manner as to assure that no person shall, on the grounds of race, color, sex, or national origin, be denied the benefits to which the person is entitled, or be otherwise subjected to discrimination, in compliance with Title VI of the 1964 Civil Rights Act (43 USC 2000d, et seq.).
- I. Agents who prepare appraisals shall not negotiate for the acquisition of parcels they have appraised except as noted in Section 8.01.08.00 and the Appraisal chapter.
- J. Agents shall not negotiate for any property in which they or their relatives, friends, business associates or others with whom they are closely associated have any personal or financial interest.
- K. The Agent assigned to acquire a property shall maintain a timely written record of all contacts with the owner or owner's representative and any tenants or lessees.
- L. In completing and reporting a transaction, the acquisition agent shall prepare a complete written explanation which will leave no doubt in the mind of the reviewer that all elements of the transaction were given adequate and equitable consideration.

8.01.04.00 **Assignments**

The Agent assigned parcels for acquisition will review the appraisal with the Senior Right of Way Agent-Acquisition and the appraiser. A field review with the appraiser will be made, if necessary, so the agent will have the benefit of all information used by the appraiser for determination of values.

The DDC-R/W or the Acquisition Branch Chief will ascertain that the agent has all of the information necessary to conduct and complete negotiations for the orderly and efficient acquisition of the right of way. This information shall include, but not be limited to:

- A. Current title reports.
- B. Approved appraisal.
- C. All factual data compiled by the Appraisal Branch for preparation of the appraisal.
- D. Necessary right of way maps, plans, profiles, cross sections, and construction details.
- E. Adequate time to study the parcels in the field.

8.01.04.01 **Acquisition by Mail**

When warranted by cost and good business considerations, the Districts may accomplish acquisition through the mail or fax—especially the acquisition of noncomplex parcels.

For example, where the appraiser of a noncomplex \$10,000 or less parcel also acts as the acquisition agent, the initial inspection of a property with the owner and the initial offer (if made to the owner at the same time as the initial inspection) will, of course, take place in the course of a personal contact with the owner. The District, however, may consider conducting any subsequent negotiations with the owner by mail or fax.

If a property owner resides in the State but in a county outside of the District, and it is not practical for the agent to make a personal call, a letter may be addressed to the District Director in whose District the property owner resides. This letter shall contain details relative to the purchase, together with the necessary documents, to enable the DDC-R/W to assign an agent to handle the acquisition.

The District should always consider the complexity of the transaction prior to requesting that property be acquired by the District in which the absentee owner lives. This is primarily because the agent assigned the parcel will have personally inspected the property in the process of reviewing the appraisal and have more familiarity with it and the related comparable sales. This approach should be used only in acquisitions which do not involve relocation assistance and which are nominal in value. Individual cases otherwise qualified for handling by mail may require personal contact. In addition, if the property owner resides outside of the State, acquisition should be carried on through the mail or fax. In transmitting the Contract and Deed, the agent is to express the terms and conditions of the transaction clearly and concisely and include maps showing the right of way requirements. See Section 8.01.11.00 for a discussion on the delivery of documents.

8.01.05.00 **Acquisition Branch Responsibility in Certification Process**

The Acquisition Branch must assure that all property interests affected by a project, except utility relocation, have been or will be secured. Arrangements must be made for the removal, relocation or protection of any building improvement or other obstruction. All of these steps must be performed within the limits of Departmental policy and in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act. They must also be completed in time to meet the scheduled project certification date.

Prompt calls must be made on all property owners or interests which will be affected by clearance of the right of way. Early identification of design, construction or relocation problems should assure that ample time is available for their resolution.

For certification purposes, real property interests are secured by obtaining a properly recorded conveying document, Contract with possession clause, Order for Possession, Recordation of Final Order of Condemnation or Right of Entry. Bureau of Land Management Decisions, Forest Service Letters of Appropriation and Construction Permits qualify as conveying documents in the certification process.

The Branch Chief will establish lead time requirements which will allow time for the sending of a Notice of Intent. California Transportation Commission action, suit preparation, service of summons and complaint, and Order for Possession procedures all require substantial periods of time which affect certification dates. There should be a clear understanding between the Branch Chief and Agents regarding problem areas, such as difficult or complex acquisitions, property owners unavailable for discussions, whether publication of summons is necessary, or difficult or complex acquisitions involving building relocation, cutting and refacing of improvements, or abandoned property within the right of way.

Essentially, the responsibility of the Acquisition Branch in the certification process is to document that all interests adverse to the Department's ability to enter and/or clear a property have either been secured or all such interests will be secured by a certain date based on an executed document or legal process.

8.01.06.00 **Parcel Diary**

The purpose of the parcel diary is to record all contacts and efforts used by the Department to acquire the assigned parcel through settlement and negotiation prior to litigation.

If an action in Eminent Domain is filed, the parcel diary will be turned over to the attorney assigned to assist in the presentation of the Department's position. Parcel diaries are protected, to a small degree, from the Public Records Act and should not be provided to the owners or their representatives per an informal request. However, the parcel diary can be entered into the court proceedings (including relocation assistance appeals) as evidence, especially when the agent or attorney refers to a statement in the diary about the offer. Therefore, it is imperative that remarks in the diary refer only to the negotiations and discussions with the owners/occupants, and do not include any comments or feelings that would cause embarrassment if they become a part of the court records.

The parcel diary is generally initiated by the appraiser. The acquisition agent must maintain the diary for each assigned ownership. It will reflect the offer and status of the Department's contacts and conversations with all interested parties. It will remain with the agent's individual parcel folder until the parcel is acquired and thereafter shall become part of the permanent parcel file.

All contacts with property owners, attorneys for State or owner, witnesses or other interested parties must be shown until the parcel is closed.

The form of parcel diary and detailed instructions regarding entries are shown on Form RW 7-1. Form RW 7-23 shall be used when a loss of goodwill claim is involved.

8.01.07.00 **Separation of Acquisition and Relocation Assistance Functions**

A clear separation must be maintained between the acquisition and relocation assistance functions except when using the single agent/"caseworker" approach (Section 8.01.09.00). Departmental legal opinions have stressed that the enactment of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended April 2, 1987 was not meant to be an expansion of just compensation, but a separate obligation of the displacing agency.

8.01.07.01 **Waiver of RAP Benefits**

Waivers of RAP benefits shall not be made a part of a negotiated acquisition settlement. Waivers for reimbursement of moving costs when an owner retains items of realty as provided in Section 8.06.03.00 are not involved herein. See Section 8.06.22.00 for procedures where RAP benefits do not accrue.

8.01.08.00 **Separation of Acquisition and Appraisal Functions**

The Departmental policy is to avoid assignments which may result in conflicts of interest. An agent shall not act as both the appraiser and acquisition agent of real property where the cash to grantor exceeds \$10,000 and/or there is significant Construction Contract Work (other than replacement of existing facilities such as road approaches, fencing, irrigation pipelines, etc.). This \$10,000 limit may be exceeded by the use of nonsubstantial administrative settlements (see Sections 7.01.05.00, 8.02.02.00, 8.03.08.00, 8.50.01.00, and 10.01.13.00 for single agent, under \$10,000 process).

If the total fair market value of a parcel, including construction contract work, is \$10,000 or less, the same person may estimate and acquire the required interest through the use of a Waiver Valuation. (See Valuation Summary Statement requirements, Section 8.02.00.00.) The Waiver Valuation is not an appraisal and cannot be used for condemnation purposes. Prior to requesting a Resolution of Necessity for condemnation, an appraisal report must be prepared. An Appraisal Summary Statement (8-EX-15A) and Summary Statement Relating to the Purchase of Real Property or an Interest Therein (8-EX-16) must also be prepared and given to the property owner/lessee. See Sections 7.01.02.00, 7.02.13.00, 7.02.13.01, and 7.02.13.02 for a complete discussion of Waiver Valuation.

8.01.09.00 **Explanation of Relocation Assistance Program (RAP)**

When negotiations are initiated with the property owner, or the owner's representative for any owner-occupied property, and upon receipt of the U.S. Residency Information (Form RW 10-44), the agent will explain the Relocation Assistance Program to the owner or representative. Tenants in possession under valid agreement will have the Program explained by the RAP agent. The acquisition agent must be familiar with the contents of the RAP Chapter.

At the option of the District R/W Office, the acquisition agent may implement a single agent/"caseworker" approach for nonresidential/business owner-occupied properties.

If the single agent/"caseworker" approach is used, the agent doing the combined acquisition and RAP work should be well experienced and trained in both functions, and have sufficient time to handle both transactions. In cases of complex nonresidential moves, it is desirable to have a highly experienced RAP agent or a specialist handle such cases.

Under the conditions outlined above, it would be acceptable to have an assigned acquisition agent handle simple tenant-occupied nonresidential/business moves as well.

The single agent/"caseworker" approach is most often utilized on parcels where the total fair market value, including construction contract work, is \$10,000 or less. In these situations, the agent should be cognizant of relocation issues that may be encountered. See Section 10.01.13.00 of the R/W Manual for more information regarding relocation associated with the single agent process and the proper forms to be used. The agent's file should fully document all appraisal, acquisition, and relocation activities associated with the transaction.

8.01.10.00 **Offers to Purchase Must Be Made Promptly**

Federal, State, and Departmental policy require that a prompt offer be made to purchase property. In an active market, an appraisal may be outdated in a very short time. Failure to make prompt offers in such cases is not only inconsistent with proper acquisition procedures, but may lead to unnecessary reappraisal activity.

All offers should be made within 30 days of the approval of the appraisal. If unusual circumstances cause delays in making prompt offers, the parcel diary must contain appropriate entries to document the reason for that delay.

8.01.11.00 **Offers and Documents Delivered to Owner**

The Contract containing the offer should be handed to the property owner, or owner's authorized representative, by the agent at the first contact when price is discussed. In limited instances, an acquisition discussion could occur without handing the contract to the owner, i.e., lessee-owned improvements or lack of agreement as to ownership of improvements. When improvement ownership is established, the Appraisal Summary Statement or Valuation Summary Statement and Summary Statement Relating to the Purchase of Real Property or an Interest Therein are to be delivered without delay. See Section 8.02.00.00.

In addition to the Contract, the Appraisal Summary Statement or Valuation Summary Statement and the Summary Statement Relating to the Purchase of Real Property or an Interest Therein, the agent shall also deliver the following documents to the owner as applicable: Grant Deed, Easement Deed, Owner's Certification of Tenants (RW 10-1), Certificate of Occupancy and Receipt of Relocation Information (RW 10-25), Rental Escrow Instructions (Exhibit 8-EX-3), Rental Agreement (Exhibit 8-EX-4), Information Sheet for Owner(s) Regarding Property Tax Relief (Exhibit 8-EX-49), and the Department's Brochure and Letter. The agent must verify that the property owner has received the Title VI Civil Rights information. Appropriate entries shall be made in the Parcel Diary and the information supplied if the property owner has not received it.

All occupancy certifications must be completed at the time of initiation of negotiations to establish eligibility for relocation benefits. Certifications obtained along with a copy of all RAP documents presented at the initiation of negotiations are to be forwarded to the RAP Senior within two working days of the initiation of negotiations (see Manual Section 10.01.11.05). Diary entries on the correct form are to be included with the above documents. Certification on vacant unimproved land is needed only if some personal property is stored on the property. If the property owner will not sign the occupancy certifications, a complete diary entry to that effect must be made.

An Offset Statement should be secured, if feasible, on properties occupied by tenants who own or claim ownership in some of the improvements. See Section 8.04.15.00.

If Rental-Escrow instructions are secured, copies of such instructions are to be delivered to the Relocation Assistance Branch subsequent to the Initiation of Negotiations (ION) and to the Property Management Branch immediately after the Contract has been accepted on behalf of the State by the DDC-R/W, or delegate. If the property owner has received rent for vacated units, as described in Section 8.01.31.00, a reconciliation of such payments and Rental-Escrow instructions shall be made in order to avoid conflicts and ensure that State payment ends at close of escrow or date of possession.

When structural improvements are within or partially within the right of way, the initial offer will be on the basis of purchase of the improvements. The property owner *may* then be given the option to either retain improvements or arrange for their relocation in lieu of purchase. See Sections 8.06.07.00, 08.00 and 09.00.

The acquisition agent will provide Summary Statements to parties having an interest in the property. These statements shall show values of the property required, damages, if any, and the total payment. If the value of the appraisal is changed, updated Summary Statements shall be provided. Administrative settlement offers or independent condemnation appraisals do not require revised Summary Statements. See Section 8.02.00.00, et seq., for a detailed discussion on Summary Statements.

When it becomes necessary to transmit offers by mail, as in the instances described in Section 8.01.04.01, "Acquisition by Mail," or when an owner or authorized representative demands that the offer be presented in writing, the offer shall be stated in the following manner:

- A. In instances where no condemnation action has been filed: "Enclosed is a Right of Way Contract (in duplicate), in the amount of \$_____, which contains all of the terms and conditions of this transaction."
- B. In instances where a condemnation action has been filed: "In order to dispose of pending litigation, we hereby offer you \$_____ to settle the above-named parcel."

8.01.11.01 **Administrative Methods to Avoid Acquisition of Excess Parcels**

To avoid acquiring low-valued, fragmentary excess parcels and carrying such parcels in the excess lands inventory, the Districts may offer the following incentive to property owners as a nonsubstantial Administrative Settlement: Whenever uneconomic remnants have an after-value of \$5,000 or less, the property owner may retain the uneconomic remnant remainder and be paid as if the Department had acquired it as excess land.

Acquisition agents are encouraged to exchange excess lands adjoining or near the acquisition parcel at time of acquisition. If necessary, excess land can be exchanged subject to a temporary construction easement required to construct the Department's project. See Manual Sections 8.12.01.00, et seq., for further procedures regarding Exchanges and Abandonments.

8.01.12.00 **Property Owner's Right to Review Department's Appraisal**

Government Code Section 7267.2 provides in part that:

"Where the property involved is owner-occupied residential property and contains no more than four residential units, the homeowner shall, upon request, be allowed to review a copy of the appraisal upon which the offer is based."

This statutory right will be complied with by giving each qualified property owner an Appraisal Summary Statement. The Summary Statement will advise the qualified owner of the right to review the appraisal upon which the offer on that property was based. A parcel diary entry is to be made indicating the qualified property owner was orally informed and given the Appraisal Summary Statement. See Section 8.02.01.00, et seq.

If the property owner wants to review the appraisal, the following conditions apply:

The right to review is restricted to the approved appraisal and any revisions on which the initial or any subsequent offers are based. It does not apply to independent or staff reports prepared for use in condemnation. Restrictions on disclosure of RAP valuation data are discussed in the RAP Chapter.

The right to review applies to those elements of the appraisal report relevant to the determination of the value estimate including narrative material relating specifically to subject property, comparable sales data, appraisal, and sales maps. Should the owner request that the copy be reviewed by an attorney or other representative, this request must be in writing.

The right to review applies to any type of acquisition as long as the property is an owner-occupied residential property containing four units or less.

8.01.13.00 **Use of Primary or Alternate Appraisal Reports**

The District may pursue negotiations with a property owner on the basis of either the primary or alternate appraisal, provided both have received unqualified approval.

The decision to use the alternate must be justified and documented in the file. See Section 7.03.03.00 for a discussion of Alternate Appraisals. Approval as to value only, or other limiting language, is not considered as unqualified approval.

8.01.14.00 **Current Status of Market Value**

The acquisition agent, in discussions with property owners or owner's representative, should solicit information such as sales which the owner may be relying on to support an opinion of value.

Whenever pertinent information is obtained that suggests a change in value on the property to be acquired, the acquisition agent shall supply such data to the Appraisal Branch with a request that the appraisal be reviewed and updated as necessary. The analysis of such sales data is the function of the Appraisal Branch. In an active real estate market, the Appraisal Branch should be supplied with any new data so investigation and analysis of such is reflected as soon as feasible in revision of appraisals.

The Appraisal Branch will analyze the new data and determine its applicability to unacquired parcels. If the Appraisal Branch determines adjustment is not warranted, the Acquisition Branch will be notified. If the Appraisal Branch determines adjustment is necessary, the following action will be taken:

Depending upon time and available personnel, the appraisal will be either revised and, when required, submitted to HQ R/W for approval, or a Memorandum of Adjustment made and furnished to the Acquisition Branch.

8.01.15.00 **Negotiating With an Attorney or Third Party**

Unless otherwise authorized by the property owner, all acquisition discussions shall be with the owner. When an attorney has been retained by the property owner, acquisition discussions will generally be with the attorney. In some instances, an attorney will consent to further discussions between the agent and property owner. Since variations of this are probable, the agent should attempt to establish clear guidelines with the attorney, in writing, for such discussions.

If the property owner employs someone as a representative to conduct discussions, care must be exercised in establishing the extent of the authority of the owner's representative. Such authority or agreement must be in writing from the property owner.

Whether dealing with an attorney or other type representative, it is essential that clear ground rules are established since no two such acquisitions involving third parties are identical. The Acquisition Branch may sometimes find it desirable or necessary to involve the Regional Legal Office in communicating with the property owner's attorney.

8.01.16.00 **Exchange of Noncontiguous Land or Land Yet to be Acquired**

All exchanges are subject to approval by the California Transportation Commission (CTC). Excess real property may be used in exchange for all or part consideration for other property required for State Highway purposes. Exchanges of land in right of way transactions should be limited to those cases where the excess real property is contiguous to the remaining property owned by the grantor of the property being acquired. The prior approval of HQ R/W must be obtained before noncontiguous excess real property or property yet to be acquired is proposed for exchange in a Contract. A copy of the authorization will be included in the MOS. Finding “A” or “B” situations are the most acceptable type exchange. It is Departmental policy to dispose of excess property by public sale whenever possible. Exchanges are justified if sale of an excess parcel to the general public would be injurious to the interests of the abutting owner or if damages are minimized by an exchange and the grantor’s property rehabilitated to permit the highest and best use. For a complete discussion of this topic, see Section 8.12.00.00.

8.01.17.00 **Request for Appraisal Review Prior to Commencement of Eminent Domain Proceedings**

The District must ensure that the outstanding offer reflects current market value. The Departmental policy is to make every reasonable effort to acquire property expeditiously and pay just compensation. During the negotiation process, the agent should be able to determine if an adjustment in the appraisal could lead to a settlement. Prior to commencing eminent domain action, the agent will provide the Appraisal Branch with all pertinent information which has been obtained and which may have an effect on the market value of the property.

At least 60 days prior to the mailing of the Notice of Intent, the Acquisition Branch shall submit a “Request for Confirmation of Market Value” (Exhibit 8-EX-5) to the Appraisal Branch to ascertain whether the staff appraisal represents current market value. The Appraisal Branch will review and either confirm or revise the valuation of parcels to be included in a condemnation suit and report their findings to the Acquisition Branch. See also Section 8.01.19.00.

8.01.18.00 **Appearances by Property Owners Before the Transportation Commission**

Initiation of the condemnation process, as it affects a property owner, commences with the mailing of the “Notice of Intent (Notice).” See Form RW 9-1 and Section 9.01.04.00.

The Notice advises the property owner that the State intends to seek authority from the California Transportation Commission (CTC) to institute eminent domain proceedings. Authority is the “Resolution of Necessity” (Resolution) adopted by the CTC. This gives the Department the right to file a condemnation action and, subsequently, with the approval of the Superior Court, take possession of the property.

The property owner has the right to contest the adoption of the “Resolution.” The “Notice” informs such owner what steps are to be taken to exercise that right. (See Section 9.01.06.00.)

Property owners must file a written request with the CTC to appear before them within 15 days of the mailing of the “Notice” [CCP Section 1245.235(3)]. Upon receipt of the owner’s request to appear, Headquarters will instruct the District to conduct a Condemnation Evaluation Meeting (see Section 9.01.07.00). The participants at this meeting will be the District Director, Deputy District Directors from Design and Right of Way, and the owner and/or their representative(s). This meeting should be limited to the appropriate functional managers, the Single Focal Point, and the Headquarters Design Coordinator. Other staff should be available on standby or by phone to be called upon as deemed appropriate to provide supplemental project information to the participants, if necessary. The Deputy District Director of Right of Way will chair the meeting. The Chair reminds the owner the CTC will only consider issues of project need, project design, and necessity of purchasing the owner’s property; the CTC will not consider issues of compensation.

District management will have the opportunity to hear and discuss the issues of both sides regarding the acquisition of the subject property. This may result in the District modifying its requirements, resulting in agreement, or confirming their position.

If this review does not result in agreement and the District's recommendation is to proceed with the project, District Design in coordination with Right of Way will prepare an Appearance Information Sheet (AIS) and Fact Sheet [http://www.dot.ca.gov/hq/oppd/pdpm/apdx.htm/apdx_jj/apdx_jj.htm] which will be sent to the Headquarters Chief, Division of Design (DOD) for processing, with a copy to HQ Chief, Division of Right of Way and Land Surveys (R/W&LS). This submittal serves as the District's request to HQ to schedule the Condemnation Review Panel (Panel) to begin review of the project in pursuit of a Resolution of Necessity. After the Panel has reviewed the facts presented in the AIS, a decision will be made by the Division Chiefs of both HQ DOD and R/W&LS, whether or not to proceed to a Condemnation Panel Review Meeting (see Section 9.01.08.00) by the Condemnation Review Panel. The Panel will consist of representatives from HQ R/W&LS (as Chairperson), Legal, and DOD. The R/W panel chairperson will designate a R/W staff person to serve as the secretary to the Panel. As with the District Condemnation Evaluation Meeting, the owner and/or their representative will present their position as to why the property should not be acquired by the Department and the District will present the project scope and project impact.

After this review, the Panel will make either a recommendation to the District for action to resolve the problem or to the Chief Engineer to proceed to the CTC to secure a "Resolution." The determining factor will be whether or not the District has complied with all of the requirements necessary in designing the project and in attempting to acquire the property in question. The date selected for presentation to the CTC will be governed by the completeness of the AIS and Fact Sheet, whether or not the matter is to be elevated by the Panel, and the time required for the Panel to perform its function in relation to the monthly cutoff dates for submitting agenda items (with supporting documentation) to the CTC.

The CTC is limited in its consideration by Section 1245.230 of the CCP to the following three conditions: (1) the public interest and necessity require the project; (2) the proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and (3) the property described in the resolution is necessary for the proposed project.

At the CTC meeting, property owners or their representatives may raise questions regarding the acquisition during the presentation of the arguments opposing adoption of the "Resolution." As such, it is imperative the information contained in the AIS and Fact Sheet be up to date, complete and factual.

The District Condemnation Evaluation and Condemnation Panel Review meetings shall be conducted separately to afford the District every opportunity to discuss the project and to negotiate a settlement with the property owner. The District Condemnation Evaluation meeting must be held far enough in advance of the Condemnation Panel Review meeting to allow adequate time for the District to consider and evaluate recommendations discussed at the District meeting. Results of all evaluations are to be included in the Appearance Information Sheet (AIS) and the District's presentation during the Condemnation Panel Review meeting.

The Chief Engineer has delegated the District Director the authority to combine the District Condemnation Evaluation and Condemnation Panel Review meetings for those projects where the property owner's issues are not related to the project's design. When this authority is exercised, the District Director shall provide in writing to the Chief Engineer, Attn: Chief DOD, a notice of the decision to combine the meetings and verification that the property owners' issues are not design related. The District will be responsible for notifying the Panel secretary to coordinate the Panel's participation at the combined meeting. The District also assumes the responsibility of preparing and finalizing the Appearance Information Package which includes the Panel Report (see Exhibit 9-EX-1), and to prepare the District Director or Deputy District Director to present the Department's

draft CTC presentation to the Chief Engineer at the Resolution of Necessity Dry Run held in Headquarters. The Single Focal Point will coordinate the District's handling of the necessary deliverables and will be responsible for assessing potential risks for the District. The Chief Engineer will determine at the conclusion of the District's Resolution of Necessity Dry Run presentation if the "Resolution" is ready to move forward to the CTC for consideration. The Panel Report, which is approved by the Chief Engineer, is the Department's authorization to proceed before the CTC to obtain the Resolution of Necessity. The District is required to meet the Office of CTC Liaison's predetermined deadlines [<http://onramp/hq/transprog/>] for submittal of documents and presentations so book items can be finalized for the CTC's agenda.

Specific details regarding the Resolution of Necessity Process, procedures for performing the District Condemnation Evaluation Meeting and the Condemnation Panel Review Meeting, along with outlines and suggested formats for the AIS and Fact Sheet are found in Chapter 28 of the Project Development Procedures Manual [<http://www.dot.ca.gov/hq/opdp/pdpm/chap.htm/chapt28/chapt28.htm>].

8.01.19.00 **Use of Staff Independent or Fee Appraisers**

Once the decision to proceed with condemnation is made, the Appraisal Branch will be requested to complete Exhibit 8-EX-5, "Request for Confirmation of Market Value," including page 2 regarding "Employment of Appraiser."

This procedure is intended to ensure:

- A. That the staff appraisal is revised, if market data justifies such a revision, so current market value offer can be made to the property owner *before* condemnation is started; and
- B. That qualified *staff* personnel are used whenever possible in lieu of independent fee appraisers, in accordance with SPB rules.

8.01.20.00 **Payment of Out-of-Pocket Expenses**

The Department may reimburse property owners for expenses incurred in development of a property, when development is interrupted by acquisition, provided certain criteria are met and an audit of the validity of the claimed expenses supports such payment. When an owner requests payment for such expenses:

- A. The property owner will be requested to complete and sign three copies of a "Claim for Payment of Expenses Actually Incurred." One copy should be retained by the owner, one copy for the District Right of Way files, and the third copy submitted by the District to the Audit Function, Office of Audits and Investigations with a request for an audit.
- B. The audit, in addition to verification of the expenses, will identify the expense items that are reimbursable by the State, e.g., map checking fees, building permit fees, architectural plans, materials, services, etc. The audit will also identify those items which are not reimbursable and the reasons therefor.
- C. During the course of the audit, Appraisal Branch personnel should assist in the review of the reasonableness of the expenses claimed. Development plans will be reviewed to determine whether they are reasonable for the proposed development and contribute to the market value of the property. This review may also reveal whether any expense item claimed might have already been considered and included in the approved appraisal.

- D. A nonsubstantial payment based on the total of the audit recommended expenses may be authorized by the District on an administrative basis. Agents must check the current R/W Planning and Management Delegation of Authority matrix to determine the maximum amounts Districts and Regions may authorize. A substantial payment requires prior approval of HQ R/W.

Claims for these types of expenses may also be made on unacquired parcels when negotiations have been suspended on routes which are deleted. If the property owner's financial outlay meets the criteria of a contribution to the value of the property and subsequently the materials, services, plans, etc., cannot be used as a result of our actions, or lack thereof, then such claim should be processed (and coordinated with the Regional Legal Office in cases involving abandonments or the elimination of contractual obligations) on the same basis as though the State were completing the acquisition of the property. See Exhibit 8-EX-7.

8.01.21.00 Impounded Funds Held for Tax Payments

Lending institutions may, as part of monthly real estate loan payments, require sufficient funds to accumulate in an impound account for payment of property taxes. When the agent determines that a lending institution is impounding funds for tax payments on the parcel being acquired, the agent should advise the grantor to contact the lending institution and arrange for a refund of the pro rata share of such impounded funds.

8.01.22.00 Notification to Property Owner Regarding Tax Liability and Property Tax Relief

Sections 5084, 5085 and 5086 of the Revenue and Taxation Code provide procedure for the collection or cancellation of real property taxes on property being acquired under authority of eminent domain statutes. See Sections 8.04.24.00 and 8.04.26.00.

While the Revenue and Taxation Code authorizes payment of unpaid taxes and current taxes out of escrow or out of the award in an eminent domain action, some tax collecting agencies may not, after notification by the District, place a demand for such taxes. These tax collecting agencies may prefer to have such taxes transferred to the unsecured roll for eventual payment, or in the case of a partial acquisition with subsequent segregation, the unpaid or current taxes are billed with future tax bills.

The property owner should be advised that unpaid or current taxes may be paid out of escrow if the tax collector places a timely demand or they may be transferred to the unsecured roll for subsequent payment. Notification to the tax collecting agency of our acquisition and the availability of funds should eliminate any State liability imposed by the Revenue and Taxation Code.

Payment for property being acquired must not include payment for any tax—delinquent, unpaid or current.

The agent should explain to the grantor that the area conveyed to the state in a partial acquisition will be segregated and not subject to future liability by the local taxing agency.

When the grantor retains improvements, they should be informed that when the improvements are removed from the secured property roll and transferred as personal property to the unsecured property roll, they will be assessed as the personal property of the grantor. Grantor should be advised that personal property taxes are their obligation and are generally included as a separate item on the tax bill. See Section 8.06.11.00.

The property owner should be advised that Section 2(d) of Article XIII A of the California Constitution and Section 68, Revenue and Taxation Code generally provide that property tax relief shall be granted to any real property owner who acquires comparable replacement property after having been displaced by governmental acquisition or eminent domain proceedings. Exhibit 8-EX-48 lists guidelines prepared by the State Board of Equalization and Exhibit 8-EX-49 is an informational sheet to be reproduced and given to owners.

8.01.23.00 **Refund of Prepaid Current Taxes**

The taxpayer whose property is to be acquired is entitled to a refund of prepaid current taxes which would have been subject to cancellation, if unpaid. The person who paid the taxes must request the refund after the close of escrow. The acquisition agent shall inform the grantor (taxpayer) that any refund will be paid only after the grantor personally applies to the City or County Tax Collector.

For disposition of prepaid current taxes on property acquired by Eminent Domain, see Sections 8.04.24.00 through 8.04.26.00.

8.01.24.00 **Grantor's Obligation to Pay Personal Property Tax**

Property owners should be advised of their obligation to pay personal property taxes. These personal property taxes are generally included as a separate item in the tax bill.

8.01.25.00 **Title Services on Low Valued Parcels**

Normal title services may be waived for parcels where the indicated value will be \$2,500 or less, except where it is prudent to utilize those services or as a condemnation proceeding requirement. The potential existence of parcels falling into this value range should be identified early by joint effort of the Right of Way Engineering personnel with the Appraisal and/or Estimating staff(s).

Ownership and legal descriptions of these properties may be obtained by staff personnel from the public records or by title company Record Owner Guarantee. In either event, the Acquisition Agent shall make a reasonable attempt to determine what items, if any, should be taken subject to and what items may be so detrimental as to require clearance. Provision must be made for the payment of any delinquent taxes on a total acquisition. One of the standard indemnification clauses should be included in the contract. See Section 8.04.04.00. Waiver of normal title services does not mean the Acquisition Agent should not make a reasonable effort to eliminate title exceptions which may be detrimental to State's title.

8.01.26.00 **Payment for Parcels Appraised as Nominal**

When the total appraised value of all property rights or interest to be acquired from an ownership is \$2,500 or less, the "Market Value of Required Property" may be shown as "Nominal" on the parcel appraisal page. Districts have the authority to offer up to \$2,500, but not less than \$500 on parcels appraised as "Nominal." A minimum value offer of \$1,000 is required prior to submitting a request for a Resolution of Necessity.

The District will determine the amount to be offered prior to the first call on the owner. The determination of the amount to be offered will be a judgmental decision based on both a project basis as well as the classification (title, size, etc.) of the acquisition.

Alternately, when the compilation on the appraisal page shows a figure less than \$2,500, the offer will be that figure as a minimum, but not less than \$500. Also, see the Appraisal Chapter (Section 7.02.14.00).

8.01.27.00 **“One Call” Draft Purchase Order (DPO) Process**

Payment to grantors may be expedited by using the Draft Purchase Order (DPO) Process, when settling a low-valued transaction of \$2,500 or less, after the basis for just compensation has been established with either an approved appraisal or a Waiver Valuation. The grantor may be paid during the initial call with a DPO. The interest acquired must be \$2,500 or less, and only one DPO may be issued per parcel.

DPOs should be limited to “One Call” transactions, including payment to the grantor. However, unusual circumstances may lead to up to three calls, if necessary.

The agent must obtain a DPO from the fund custodian. The agent and the grantor must countersign the DPO. The DPO, along with the payment package, must be submitted to Right of Way Accounting within ten days of issuance of the DPO.

8.01.28.00 **Administrative Authorizations**

Administrative authorizations deal with Independent or Staff Independent Appraisal Reports. The reports are initially reviewed and analyzed by the Appraisal Branch. Thereafter, they are sent to the Acquisition Branch so the necessary authorizations for their use may be secured. Independent or Staff Independent Appraisals are authorized for use by the DDC-R/W in amounts up to \$500,000. Authorizations over \$500,000 must be approved by HQ R/W. A memorandum recommending authorization should be secured from the attorney assigned to the case in which the appraiser will testify and made part of the file.

8.01.29.00 **Administrative Settlements**

Prior to the filing of an eminent domain suit and the hiring of an independent expert witness/appraiser, property may be acquired through settlement at a payment which varies from an approved appraisal through the Administrative Settlement process. When the difference between the approved staff appraisal and proposed settlement is \$500,000 or less, the increase is considered Nonsubstantial, and it may be authorized by the DDC-R/W. When the difference between the approved staff appraisal and proposed settlement is more than \$500,000, the increase is considered Substantial. A Substantial increase requires the prior authorization of HQ R/W.

Any increase must be based on and be supported by the guidelines contained in 49 CFR 24.102(i). The final offer of compensation required by Code of Civil Procedure, Section 1250.410 (see the Condemnation Chapter) is to be made in anticipation of protecting the Department against payment of attorney’s fees and related costs. It also must be supported by the guidelines in the CFRs.

When an administrative settlement is reached on owner-occupied residential property, the RAP staff must be notified so that any necessary adjustment to the Price Differential Benefit may be determined.

Administrative settlements are to be distinguished from administrative authorizations. Administrative authorizations involve the use of Independent or Staff Independent Appraisals. Administrative settlements are based on factors other than those which are used as market value premises in the preparation of an appraisal. Administrative Settlements are not to be used in lieu of an updated appraisal report. All of the guidelines included in the CFRs are pertinent. However, the more commonly used guidelines in determining whether an administrative settlement should be made are:

- A. All available appraisals, including owner’s appraisal.
- B. Recent court awards for similar properties.

- C. Acquisition agent's recorded information.
- D. Range of probable testimony in trial. (Trial Risks)
- E. Opinion of legal counsel, where applicable.
- F. Trial cost when considered with other information.

Requests for approvals of Substantial administrative settlements are to be submitted to the Acquisition Section of HQ R/W utilizing Exhibit 8-EX-50. A supporting memorandum or documentation (legal memorandum, where applicable) is to be attached as necessary. If time does not permit a memorandum, the form may be faxed for conditional telephone approval. Approval may take the form of a range of acceptable values. When settlement on conditional approvals is made, the District must submit a memorandum as discussed above, or a confirming memorandum containing the justifying details within 10 to 15 working days. Approved administrative settlements are to be incorporated into the Memorandum of Settlement.

Exhibit 8-EX-50 may be used to justify and/or approve Nonsubstantial administrative settlements.

8.01.29.01 Legal Settlement Recommendations

- A. Once an Eminent Domain Suit has been filed, an Expert Witness has been hired, AND a settlement that exceeds the amount of the approved staff appraisal is proposed based upon new appraisal data from said witness, the settlement will be considered a LEGAL SETTLEMENT subject to the requirements of 23 CFR 710.105 and 710.203 and Department procedures pertaining to a LEGAL SETTLEMENT. All LEGAL SETTLEMENT recommendation memoranda shall be written by the attorney assigned to the case. All Substantial LEGAL SETTLEMENTS are approved by HQ R/W and are not delegated. The Regions/Districts are authorized to approve Nonsubstantial LEGAL SETTLEMENTS (see Section 8.01.29.00 for definition of Substantial vs. Nonsubstantial administrative and legal settlements).

In processing payment for LEGAL SETTLEMENTS, the Attorney's Legal Settlement Memo must be received and approved prior to the actual disbursement of any funds. However, as an expedient, issuance of a check by Accounting (Form RW 9-20) should be requested as soon as settlement is confirmed.

- B. All other settlements that exceed the amount of the approved staff appraisal will be considered ADMINISTRATIVE SETTLEMENTS and subject to the requirements of 49 CFR 24.102(i) and Department procedures pertaining to an ADMINISTRATIVE SETTLEMENT.
- C. Additional information regarding delegated authority for Administrative/Legal Settlement can be found at the following Intranet site (for Department use only):
<http://pd.dot.ca.gov/row/offices/acquisition/memos/>.

8.01.30.00 Easements in Limited Vertical Dimension

The Department may acquire easements in limited vertical dimension (aerial easement). Typically, this occurs when a proposed structure passes over land on which the surface use is to continue. The conveying document will contain conditions which limit, for safety or other reason, the uses to which the property under the structure may be put or the present use continued. (See Forms RW 6-1[X] and RW 6-1[Y].) The legal description attached to a Notice of Intent advising owners of our intention to secure a Resolution of Necessity must contain all of the limiting conditions.

8.01.31.00 **State Rental of Residential or Commercial Units Prior to Acquisition**

Current practice in the Relocation Assistance Program allows the payment of benefits to qualified rental displacees as soon as the initiation of negotiations, or settlement, has been made to the property owner. When the displacee vacates the property pursuant to such a payment but prior to acquisition of the property by the State, acquisition problems may be created. During the period that negotiations are underway, the property owner may feel it necessary to re-rent the property to provide an income stream, sometimes at lower than market rental rates. This can leave the State with additional relocation assistance payment costs and work that can delay project delivery.

In certain circumstances, vacant residential or nonresidential units may be rented by the State prior to acquisition to keep the units vacant and thus to expedite project delivery and minimize relocation assistance costs. This procedure is especially useful in regard to multiresidential properties, mobile home spaces, ministorage units and similar properties.

Districts are encouraged to use the provisions of this section when anticipated savings will be substantial and/or when project delivery schedules indicate it will be necessary. When it is clear that units should be rented under the provisions of this section but for some reason this cannot be accomplished, consider obtaining an early Order for Possession.

8.01.31.01 **Arranging for Pre-Escrow Rentals**

Acquisition must obtain the written approval of the DDC-R/W prior to instituting this procedure on any project. This approval will also be the authorization to institute a “No Re-rent” policy after acquisition. (See the Property Management Chapter.)

An estimate of the potential relocation benefits by type of unit affected, along with other justifying material, will be prepared by RAP. It will be a part of the written authorization. It must show that using this procedure will expedite project delivery and/or minimize overall costs to the State. Consider the estimated lead time on the project and the aggregated rental cost to the State versus the estimated relocation expenses which could be incurred if the units were not rented by the State.

8.01.31.02 **Initiating Rental Agreement**

Districts will offer to enter into rental agreements concurrently with initiation of negotiations in cases where pre-escrow rents are approved. This procedure should also be applied where master tenants are operating properties such as mobile home parks under leases with the owners.

The Rental Agreement format set forth in Exhibit 8-EX-4 will be used. It will be prepared in advance of the first call and presented to the property owner(s) with the other acquisition documents when initiation of negotiations is made. Payment of rents may be set up in the rental agreement in two ways:

- A. Accumulation of rents owed during the rental period, and payment at close of escrow.
- B. Periodic payments during the rental period. This provision will normally be used when the fiscal condition of the property owner is such that a single delayed payment at close of escrow is not acceptable.

The existing rent schedule for the units shall be continued. If there is no existing schedule, the rental amount shall be set by the Appraisal or Property Management Branch.

8.01.31.03 **Paying and Accounting for Pre-Escrow Rents**

These rental payments are considered to be acquisition costs, not relocation assistance costs. FHWA participates in these costs, provided they are properly documented and billed. Payments made prior to acquisition may be expedited by completing the Acquisition Invoice (Form RW 8-17) and attaching the documents listed on the form. Allow 30 days for processing payments. The rental agreement must provide for proration of rents that are paid/owed at close of escrow.

A copy of Form RW 8-17, with the attachments, will be placed in each parcel file for which rental payments have been made. It will be included as an attachment to the MOS. Districts should minimize the rental period by allowing for a reasonable negotiation period and then initiating the condemnation process.

Schedules for payment of pre-escrow rent (payment packages) are submitted to District Planning and Management offices.

Pre-escrow rent transactions are considered administrative settlements. The MOS and Federal Participation Memorandum (Form RW 8-16) must reflect the full cost of acquisition including all pre-escrow rents. The total amount of pre-escrow rents is entered on the 'Rent' line of Form RW 8-16. The Federal Participation Memorandum Form should not reflect the schedules for pre-escrow rent payments made prior to close of escrow. Therefore, the amount of pre-escrow rents paid should be entered on the 'Other' line in parenthesis to indicate to R/W Accounting to subtract that amount. A full explanation of pre-escrow rent aspects of the transaction must be included in the MOS.

Where rental payments are made in advance of escrow, a tabulation of all payments made, by amount and date, will be maintained in the parcel file. A copy of this tabulation will be included in the MOS as page 3A—Recapitulation of Pre-escrow Rents.

Schedule packages for pre-escrow rents to be paid prior to the close of escrow will be reviewed in the same manner as other schedule packages. After the schedule is forwarded to Accounting for payment, the supporting documents and a copy of the schedule will be maintained in the parcel file and accumulated as periodic payments are made. When the acquisition payment package is forwarded, the accumulated materials will be used in the review to ensure that the MOS and Federal Participation Memorandum include all pre-escrow rent payments made.

8.01.32.00 **Acquisition Offers and Relocation Assistance Benefits on Parcels for Projects Not Funded**

All offers for acquisition of rights of way and relocation assistance benefits on projects not supported by budgeted funds should be withdrawn. This does not refer to offers on parcels which have been approved as hardship or protection.

Sample letters to be used for the withdrawal of offers from owners and, when applicable, tenants occupying such properties are included as Exhibits 8-EX-9, 8-EX-10, and 8-EX-11. The sample letters refer to the right to appeal the withdrawal of relocation benefits. Such appeal will be to the Relocation Assistance Program Appeals Board in Sacramento. An application to reinstate an acquisition offer should be directed to HQ R/W.

8.01.33.00 **Filing of Right of Way Contracts and Other Papers in Official Files**

All correspondence, memoranda and other papers or data relating to a particular right of way transaction shall be placed in the proper official office file for such transaction. This shall also include executed but unapproved contracts which have been superseded by new contracts. Where a project has a Federal Aid Project Number, the contract, deed and all other documents and correspondence in the parcel file must have the project number listed thereon.

8.01.34.00 **Review of Acquisition Parcel Files**

The Regions/Districts are responsible for ensuring compliance with Federal, State, and Departmental policies and procedures. Review of Acquisition parcel files is the responsibility of the District Senior. The Senior may use the acquisition checklist (Exhibit 8-EX-12) as a guide to the items which are the most sensitive. The checklist is not intended to include all items which may be the subject of a review.

8.01.35.00 **Reimbursement of Litigation and Transfer of Title Expenses - Appeal Process**

Federal regulations require that property owners be reimbursed for expenses incidental to the transfer of property as well as specified litigation expenses. These are enumerated in 49 CFR 24.106 and 24.107. FHWA also requires that property owner have an appeal process available if reimbursement or direct payment by the State is unavailable. The expenses listed under 24.106(a) are paid by the State as part of our normal process. The Code of Civil Procedure, Section 1265.240, prohibits the State from paying the expenses listed in 24.106(b). A procedure is in place for reimbursement of expenses listed in 24.106(c). Those listed in 24.107(a), (b), and (c) are paid at the direction of a court order. There does not appear to be an area under which owners would have expenses borne by themselves. However, property owners shall be advised that if they have incurred any of the expenses listed for which they have not been reimbursed, they have the right to appeal to the Director of the Department for reimbursement. To qualify for reimbursement, such expenses must have actually been incurred, be reasonable, and not at the option of the owner.

8.01.36.00 **Hazardous Waste**

It is the *policy* of the Department, in the development of transportation projects, to fully consider all potential aspects of hazardous waste (HW) sites. Where one is involved, we must ensure that adequate protection is afforded employees, workers, and the public both during and after construction. See Section 8.16.00.00 for a complete discussion on how Acquisition is to handle Hazardous Waste and Hazardous Materials. See Section 7.04.12.00, et seq., for Appraisals' involvement.

It is the Department's policy to not pay for the cleanup of HW generated by other responsible parties. Any property known or suspected to be contaminated with HW will not be acquired or possession taken until:

- A. The suspected site has been sufficiently investigated to the point of providing a reasonable assurance that no significant problem exists; or
- B. The confirmed site has been cleaned up by the responsible party prior to possession by the Department;
or

- C. A determination has been made that the HW will cause no impediment to the construction of the proposed project or to the anticipated subsequent use by the Department and the public; or
- D. The estimated cost of the cleanup has been reflected in the appraisal and acquisition process in those cases where the Department will do the cleanup work.

Exceptions to this policy must follow the approval process outlined in Section 8.16.01.02, and be approved by the Deputy Director, Project Development and the Deputy Director, Planning.

A material is hazardous if it poses a threat to human health or the environment. A hazardous material has one or more of the following general characteristics:

- A. flammable
- B. corrosive
- C. toxic
- D. reactive (subject to spontaneous combustion)

Hazardous material becomes hazardous waste when no longer of use and is to be discarded.

NOTES:

CHAPTER 8

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**SUMMARY STATEMENT RELATING TO THE PURCHASE OF
REAL PROPERTY OR AN INTEREST THEREIN**

(Form #)

The California Department of Transportation is proposing to _____[brief description of the project]_____.

Your property located at _____[address of the subject]_____ is within the project area, and is also identified by your county assessor as Parcel No. _____[APN of subject]_____.

Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the California Relocation Assistance and Real Property Acquisition Guidelines require that each owner from whom the Department of Transportation purchases real property or an interest therein or each tenant owning improvements on said property be provided with a summary of the appraisal of the real property or interest therein, as well as the following information:

1. You are entitled to receive full payment prior to vacating the real property being purchased unless you have heretofore waived such entitlement. You are not required to pay recording fees, transfer taxes, or the pro rata portion of real property taxes which are allocable to any period subsequent to the passage of title or possession.
2. The State will offer to purchase any remnant(s) considered by the State to be an uneconomic unit(s) which is/are owned by you or, if applicable, occupied by you as a tenant and which is/are contiguous to the land being conveyed.
3. All buildings, structures and other improvements affixed to the land described in the referenced document(s) covering this transaction and owned by the grantor(s) herein or, if applicable, owned by you as a tenant, are being conveyed unless other disposition of these improvements has been made. The interest acquired is _____[describe requirement degree of title]_____. The property being purchased comprises _____[area of the acquisition: ____ acres/square feet]_____ and is described in the attached deed and outlined in color on the attached map.
4. The market value of the property being purchased is based upon a market value valuation which is summarized on the attached _____[Appraisal or Valuation]_____ Summary Statement and such amount:
 - a. Represents the full amount of the _____[appraisal or valuation]_____ of just compensation for the property to be purchased;
 - b. Is not less than the approved _____[appraisal or valuation]_____ of the fair market value of the property as improved;
 - c. Disregards any decrease or increase in the fair market value of the real property to be acquired prior to the date of valuation caused by the public improvement for which the property is to be acquired or by the likelihood that the property would be acquired for such public improvement, other than that due to physical deterioration within the reasonable control of the owner or occupant; and
 - d. Does not reflect any consideration of or allowance for any relocation assistance and payments or other benefits which the owner is entitled to receive under an agreement with the Department of Transportation.
5. Pursuant to Code of Civil Procedure Section 1263.025 should you elect to obtain an independent appraisal, the Department will pay for the actual reasonable costs up to five thousand dollars (\$5,000) subject to the following conditions:
 - a. You, not the Department of Transportation (Department), must order the appraisal. Should you enter into a contract with the selected appraiser, the Department will not be a party to the contract;

**SUMMARY STATEMENT RELATING TO THE PURCHASE OF
REAL PROPERTY OR AN INTEREST THEREIN (Cont.)**

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- b. The selected appraiser is licensed with the Office of Real Estate Appraisers (OREA);
- c. Appraisal cost reimbursement requests must be made in writing, and submitted to the Department of Transportation at _____[insert appropriate address]_____ within ninety (90) days of the earliest of the following dates: (1) the date the selected appraiser requests payment from you for the appraisal; or, (2) the date upon which you, or someone on your behalf, remitted full payment to the selected appraiser for the appraisal. Copies of the contract (if a contract was made), appraisal report, and the invoice for the completed work by the appraiser must be provided to the Department of Transportation concurrent with submission of the Appraisal Cost Reimbursement Agreement. The costs must be reasonable and justifiable.
6. The owner of a business conducted on a property to be acquired, or conducted on the remaining property which will be affected by the purchase of the required property, may be entitled to compensation for the loss of goodwill. Entitlement is contingent upon the _____[insert appropriate reference]_____ ability to prove such loss in accordance with the provisions of Sections 1263.510 and 1263.520 of the Code of Civil Procedure.
7. If you ultimately elect to reject the State's offer for your property, you are entitled to have the amount of compensation determined by a court of law in accordance with the laws of the State of California.
8. You are entitled to receive all benefits that are available through donation to the State of California of all or part of your interest in the real property sought to be acquired by the Department of Transportation as set out in Streets and Highways Code Sections 104.2 and 104.12.
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